IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

WEDNESDAY, THE 19TH DECEMBER 2007 / 28TH AGRAHAYANA 1929

WP(C).No. 37857 of 2007(F)

OS.187/2001 of PRL.MUNSIFF COURT, CHERTHALA

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PETITIONER:

ABDUL KALAM ,S/O. SAIDUMMUHAMMED
THEKKEVELIYIL HOUSE, PATTANAKKADU MURI,
PATTANAKKADU VILLAGE, CHERTHALA TALUK,
ALAPPUZHA DISTRICT.

BY ADV. SRI.P.S.KRISHNA PILLAI

RESPONDENT:

VALSALAN ,S/O. DAMODARAN,
CHIRAYIL HOUSE, PADINJATTUMKARA VADAKKUM MURI
KUTHIYATHODU VILLAGE, CHERTLALA TALUK,
ALAPPUZHA DISTRICT.

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 19/12/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N.KRISHNAN, J.

W.P.(C). NO. 37857 OF 2007

Dated this the 19th day of December, 2007

J U D G M E N T

This writ petition is preferred against the order of the Munsiff, Cherthala in E.A. 530/07 in O.S. 187/01. By the said order, learned Munsiff has sent a communication under Order XXI Rule 52 of the CPC to the Judicial First Class Magistrate Court-I to attach the amount lying in C.C. 232/00.

2. The grievance of the writ petitioner is to the effect that such an order has been passed without hearing him and since this court has directed the appellate court, where an appeal is pending, to consider the stay application afresh it was not correct on the part of the decree holder to have moved an application of this nature and obtained an order behind his back. I have passed an order in W.P.(C) No. 29354/07 whereby I set aside the order of stay on the ground that the decree holder was not heard. I directed the Subordinate Judge, Cherthala, to reconsider the matter afresh after hearing both sides and dispose it of in accordance with law. Admittedly it is a money decree. One has to comply with the requisites of Order XLI Rule 5. When the Subordinate Judge passes an order after hearing both sides and whereby the court is satisfied that sufficient security is furnished for the purpose of realising the decree debt then naturally, the

petitioner herein can move an application before the executing court, which has passed an order attaching the amount before the Magistrate court, to release the attachment. Till then, it may not be correct to direct the executing court to withdraw that order.

Therefore, I dispose of the writ petition with a direction to the Subordinate Judge, Cherthala, to consider the stay application after hearing both sides. On compliance with the Order XLI Rule 5 intimate the same to the executing court. Thereafter, on an application moved by the petitioner court can consider the question of raising the order passed, against which this writ petition is preferred and after hearing both sides dispose it of in accordance with law. The sufficiency or otherwise of the security is a matter that has to be considered by the Court below. If the order of attachment already made is sufficient, that may be considered by the appellate court while passing order in the said application.

M.N.KRISHNAN, JUDGE

vps